

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

JESSE DAVIDA, Individually and on
Behalf of Others Similarly Situated,

Plaintiffs,

v.

NEWPARK DRILLING FLUIDS, LLC,

Defendant.

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SA-14-CA-552-HJB

ORDER

Before the Court is Plaintiffs' Motion for Leave to Amend Complaint. (Docket Entry 106.)

The Court has authority to consider this motion pursuant to 28 U.S.C. § 636(c), as the parties have consented to its jurisdiction for all matters. (*See* Docket Entry 13.)

This a collective action suit alleged by current and former employees to recover unpaid minimum wages and overtime compensation under the Fair Labor Standards Act ("FLSA"), 29 U.S.C. § 201, *et seq.* (Docket Entry 1.) Plaintiffs are current and former Fluid Service Technicians ("FSTs") employed by Defendant Newpark Drilling Fluids, LLC ("Newpark"). (*Id.*) Plaintiffs allege that Newpark's pay policy denied them overtime for hours worked in excess of forty hours per week, and that Newpark failed to pay them at rates not less than one and one-half times their regular rates. (*Id.*) Plaintiffs allege that such action constitutes willful violations of the FLSA. (*Id.*)

In their proposed amended complaint, Plaintiffs seek to add class-action claims under the wage and employment laws of four states: New York, North Dakota, Ohio, and Pennsylvania. (*See* Docket Entry 106-1, at 12–15.) Newpark opposes amendment, challenging, among other things, the standing of the proposed Ohio class representative, the numerosity of some of the proposed classes

(particularly those in New York and Ohio), and the propriety of allowing the new class claims to relate back to the date of the original complaint under Federal Rule of Civil Procedure 15(c)(1)(B). (See Docket Entries 107, 114.)

The Court held a hearing on Plaintiffs' Motion on October 27, 2015. In accordance with the Court's rulings at the hearing, and in accordance with the liberal amendment policy set out in Federal Rule of Civil Procedure 15(a), it is hereby **ORDERED** that Plaintiffs' Motion for Leave to Amend Complaint (Docket Entry 106) is **GRANTED IN PART** and **DENIED IN PART**, as follows:

1. **On or before November 3, 2015**, Plaintiffs may file an amended complaint adding the state law claims set out in their proposed amended complaint. Such amended complaint must expressly state the jurisdictional basis for any of these claims.
2. The Court's granting leave to file an amended complaint is without prejudice to the arguments raised by Newpark in its opposition. With regard to the standing and relation-back issues set out in Newpark's opposition, Newpark may file motions to dismiss or to limit the proposed classes **on or before November 23, 2015**. Plaintiffs must respond to such motion(s) **on or before December 15, 2015**.
3. With regard to any state-law-based class action added by an amended complaint, Plaintiffs must file a motion to certify the class under Federal Rule of Civil Procedure 23 **on or before April 29, 2016**.
4. Plaintiffs must deliver a written offer of settlement to Newpark **on or before November 3, 2015**. Newpark must respond in writing **on or before November 17, 2015**.
5. The parties must attend mediation in this case **on or before January 22, 2016**.

SIGNED on October 27, 2015.



Henry J. Bemporad
United States Magistrate Judge